

JAMES GEORGE DOURIS,

 Plaintiff,

 v.

 COUNTY OF BUCKS,
 MARIE COSTELLO and
 SCOTT BROBST,

 Defendants.

In his Rule 54 Motion, Plaintiff seeks to appeal the taxation of costs entered by

the Clerk of Court on November 8, 2002.¹ (See Pl.’s Rule 54 Mot. to Appeal Tax. of Costs).

Federal Rule of Civil Procedure 54(d)(1) provides, in pertinent part:

Except when express provision therefor is made either in a statute of the United States or in these rules, costs other than attorneys’ fees shall be allowed as of course to the prevailing party unless the court otherwise directs; ... Such costs may be taxed by the clerk on one day’s notice. On motion served within 5 days thereafter, the action of the clerk may be reviewed by the court.

Fed. R. Civ. P. 54(d)(1). In addition to Rule 54(d)(1), Local Rule of Civil Procedure 54.1(b)

provides the following:

All bills of costs requiring taxation shall be taxed by the Clerk, subject to an appeal to the Court. Any party appellant shall, within five (5) days after such taxation, file a written specification of the items objected to and the grounds of objection. A copy of the specifications of objections shall be served on the opposing party or his attorney within five (5) days. An appeal shall be dismissed for non-compliance with the appeal requirements.

Local R. Civ. P. 54.1(b). “The clerk’s taxation of costs is subject to *de novo* review.” Simmons v. Poltrone, 2001 WL 1251464, at *1 (E.D. Pa. Sept. 26, 2001)(citing Greene v. Fraternal Order of Police, 183 F.R.D. 445, 447 (E.D. Pa. 1998)). “Rule 54(d) creates a strong presumption that costs are to be awarded to the prevailing party.” Id. (citing In re Paoli R.R. Yard PCB Litig., 221

¹ On October 31, 2002, the Clerk of Court held a telephone conference about the taxing of costs with Plaintiff’s attorney, Brian M. Puricelli, Esq., and Defendant County of Bucks’ attorney, Frank A. Chernak, Esq. (See Clerk’s Tax. of Costs). On November 8, 2002, the Clerk’s Taxation of Costs was filed. (Doc. No. 106). On this same day, an Order was filed that judgment was entered in favor of Defendant County of Bucks against Plaintiff for \$3,455.85. (Doc. No. 107). Although the Clerk’s Taxation of Costs and Order were entered on November 8, 2002, it appears that the Clerk’s office did not mail copies of the Taxation of Costs or the Order to Plaintiff until January 22, 2003. (See Docket Report). Plaintiff filed his *pro se* Rule 54 Motion to Appeal Taxation of Costs on January 24, 2003. (Doc. No. 108). Since Plaintiff filed his motion of appeal within the five-day period after receiving notice of the taxation, the Court will consider Plaintiff’s Rule 54 Motion to Appeal Taxation of Costs. See Fed. R. Civ. P. 54(d)(1); In re Paoli R.R. Yard PCB Litig., 221 F.3d 449, 459 (3d Cir. 2000).

F.3d 449, 462 (3d Cir. 2000)). “[T]he losing party bears the burden of making the showing that an award is inequitable under the circumstances. . . .” In re Paoli R.R. Yard PCB Litig., 221 F.3d at 462-63 (citation omitted). Among the factors that a court can consider in reviewing the taxation of costs are: “(1) the unclean hands, or bad faith or dilatory tactics, of the prevailing party; (2) the good faith of the losing party and the closeness and difficulty of the issues they raised; (3) the relative disparity of wealth between the parties; and (4) the indigence or inability to pay a costs award by a losing party.” Id. at 463.

Upon review of Plaintiff’s Motion and attached exhibits, the Court concludes that the Motion must be denied. In his Motion, Plaintiff fails to present any argument regarding the reasons why the Clerk’s taxation of costs should be reviewed by the Court. (See Pl.’s Rule 54 Mot. to Appeal Tax. of Costs). Although Plaintiff seeks an appeal of the taxation of costs, he fails to raise any argument or relevant factors in support of his appeal. (Id.). Nowhere in his Motion does Plaintiff challenge the actual total amount of costs that have been taxed by the Clerk of the Court. (Id.). Thus, Plaintiff fails to make any showing whatsoever that the taxation of costs award is inequitable. Although Plaintiff fails to show that the taxation of costs award is inequitable, the Court performed a *de novo* review of the award. Upon review of the Clerk’s Taxation of Costs, the Court finds that the total costs taxed to Plaintiff in the amount of \$3,455.85 are reasonable.² (See Clerk’s Tax. of Costs)

In light of the foregoing, the Court concludes that Plaintiff’s Rule 54 Motion to

² The costs included in the Clerk’s Taxation of Costs are the following: \$2,793.25 for depositions; \$552.60 for copying costs; \$70.00 for service fees; and \$40.00 for expert witness fees. (See Clerk’s Tax. of Costs). The total of these costs amount to the Clerk’s taxation of costs in favor of Defendant County of Bucks in the sum of \$3,455.85. (Id.).

Appeal Taxation of Costs must be denied. Plaintiff has not overcome the strong presumption that the prevailing party, Defendant County of Bucks, is entitled to a taxation of costs. See Simmons, 2001 WL 1251464, at *1; In re Paoli R.R. Yard PCB Litig., 221 F.3d at 462.

Likewise, Plaintiff has failed to meet his burden of showing that the award is inequitable under the circumstances. In re Paoli R.R. Yard PCB Litig., 221 F.3d at 462-63. Accordingly, Plaintiff's Motion to Appeal is denied and the Clerk's Taxation of Costs judgment is affirmed.

B. Plaintiff's Rule 60 Motion to Vacate Judgment Upon Fraud of the Defendants

Plaintiff's Rule 60 Motion is based upon an allegation of fraud by the Defendants, therefore, the Court will construe Plaintiff's Motion as seeking relief pursuant to Federal Rule of Civil Procedure 60(b)(3). See Fed. R. Civ. P. 60(b). Rule 60(b) reads, in part, as follows:

On motion and upon such terms as are just, the court may relieve a party ... from a final judgment, order, or proceeding for the following reasons: ... (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken.... This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28, U.S.C., § 1655, or to set aside a judgment for fraud upon the court.

Id. Thus, if a party moves to vacate default judgment pursuant to Federal Rule of Civil Procedure 60(b)(3), the party must file their motion within one year after the judgment. Id.; Franklin Mint, Co. v. Boyd, No. 99-03823, 2001 WL 474424, at *1 (E.D. Pa. May 3, 2001)(footnote omitted).

In this action, the Court entered judgment in favor of the Defendants and against

Plaintiff on August 2, 2001. (Doc. No. 90). On October 31, 2001, the Court denied Plaintiff's Motion for a New Trial Pursuant to Federal Rules of Civil Procedure 50 and 59. (Doc. No. 104). Plaintiff filed his Rule 60 Motion on January 24, 2003. (Doc. No. 108). Based upon the aforementioned, Plaintiff's Rule 60(b)(3) Motion is not timely. Plaintiff's Motion is untimely because he has filed it approximately seventeen (17) months after this Court granted judgment against him and nearly fifteen (15) months after the Court denied his Motion for a New Trial. Since Plaintiff did not move for relief within the proper one year time limit, the Court lacks jurisdiction to consider Plaintiff's claims under Rule 60(b)(3). See Fed.R.Civ.P. 60(b); Franklin Mint, Co., 2001 WL 474424, at *1 (citing Nucor Corp. v. Nebraska Public Power Dist., 999 F.2d 372, 376 (8th Cir. 1993); Nevitt v. U.S., 886 F.2d 1187, 1188 (9th Cir. 1989)). Thus, the Court concludes that relief is unavailable under Federal Rule of Civil Procedure 60(b)(3). Consequently, Plaintiff's Rule 60 Motion to Vacate Judgment Upon Fraud of the Defendants is denied.

Even if Plaintiff had moved for relief within the required one year period, he would not be entitled to relief pursuant to Rule 60(b)(3). "Rule 60(b)(3) provides for relief from a final judgment where there has been 'fraud ..., misrepresentation, or other misconduct of an adverse party.'" Stridiron v. Stridiron, 698 F.2d 204, 206-07 (3d Cir. 1983). In order "[t]o prevail, the movant must establish that the adverse party engaged in fraud or other misconduct, and that this conduct prevented the moving party from fully and fairly presenting his case." Id. (citation omitted). Thus, "[a] party filing a motion under Rule 60(b)(3) must establish by clear and convincing evidence that the alleged fraud prevented them from 'fully and fairly' presenting their case." Cavalier Clothes, Inc. v. Major Coat Co., No. 89-3325, 1995 WL 314511, at *3

(E.D. Pa. May 18, 1995)(citing Stridiron, 698 F.2d at 207). Upon examination of Plaintiff's Motion and attached exhibits, as well as the response to the Motion filed by Defendant County of Bucks, the Court concludes that Plaintiff has failed to show by clear and convincing evidence that Defendants committed fraud or that any such fraud prevented him from "fully and fairly" presenting his case. Accordingly, the Court concludes that even if Plaintiff had timely moved for appropriate relief pursuant to Rule 60(b)(3), his Motion would have been denied.

II. CONCLUSION

Plaintiff's *pro se* Rule 54 Motion to Appeal Taxation of Costs is denied. Plaintiff fails to present any argument regarding the reasons why the Clerk's taxation of costs should be reviewed by the Court. In his Motion, Plaintiff fails to overcome the strong presumption that Defendant County of Bucks is entitled to a taxation of costs. Plaintiff also fails to meet his burden of showing that the award is inequitable under the circumstances. Upon review of the Clerk's Taxation of Costs, the Court concludes that the total costs awarded to Defendant Bucks County is reasonable. Consequently, Plaintiff's Rule 54 Motion to Appeal is denied and the Clerk's Taxation of Costs judgment is affirmed.

Plaintiff's *pro se* Rule 60 Motion to Vacate Judgment Upon Fraud of the Defendants is likewise denied. The Court concludes that Plaintiff's Motion must be denied because it is untimely. According to Federal Rule of Civil Procedure 60(b)(3), the Court lacks jurisdiction to consider Plaintiff's claim because Plaintiff did not move for relief within the proper time limit. As a result, the Court denies Plaintiff's Rule 60 Motion. Even if Plaintiff had moved for relief within the required one year period, the Court finds that he would not be entitled to relief. Upon review of the Motion and its attached exhibits, Plaintiff fails to show by clear and

convincing evidence that Defendants committed any fraud or that any such fraud prevented him from “fully and fairly” presenting his case. As a result, Plaintiff’s Rule 60 Motion would have been denied even if he had timely moved for appropriate relief pursuant to Rule 60(b)(3).

An appropriate Order follows.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JAMES GEORGE DOURIS,	:	
	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	No. 99-3357
	:	
COUNTY OF BUCKS,	:	
MARIE COSTELLO and	:	
SCOTT BROBST,	:	
	:	
Defendants.	:	
	:	

ORDER

AND NOW, this 14 th day of February, 2003, upon consideration of Plaintiff's *pro se* Rule 54 Motion to Appeal Taxation of Costs and Rule 60 Motion to Vacate Judgment Upon Fraud of the Defendants (Doc. Nos. 108-1 and 108-2) and the Responses and Replies thereto, it is hereby **ORDERED** that:

1. Plaintiff's Rule 54 Motion to Appeal Taxation of Costs (Doc. No. 108-1) is **DENIED**.
2. The Clerk's Taxation of Costs judgment is **AFFIRMED**.
3. Plaintiff's Rule 60 Motion to Vacate Judgment Upon Fraud of the Defendants (Doc. No. 108-2) is **DENIED**.

BY THE COURT:

ROBERT F. KELLY,

Sr. J.

